



Wed 5/3/2017 5:08 PM

Jeff Bathke

RE: Proposed changes to Davison County Ordinance

To: 'Harvey Kelly'; 'Holly Hansen'; brucehaines@qwestoffice.net; SJHay@santel.net; crstorm@santel.net; lcbainbridge@santel.net; lylebodefarm@santel.net; weilata7@hotmail.com; Mark Jenniges; reiderman@hotmail.com; kinerdr@santel.net; johndaggett@mit-tel.net

Cc: kenstach@santel.net; stehatlange@santel.net

Mr. Kelley,

I am not attempting to “sneak in” Industrial Development. This change was explained at the last hearing. Many left before the meeting was over, so you may have missed this. The intent of changing this is for Industrial Development in general. For example, if someone wanted to build a house across the road from the POET Ethanol Plant, we would require them to sign an Agriculture Use and Industrial Development Covenant, stating they understood they live in an Agriculture or Industrial area and could not complain about noise, etc. Industrial Development is the planning and building of new industries in special areas. Each proposed development will have a different effect on the area, so each situation will be addressed individually. We often, almost on a weekly basis, are asked to provide information on prospective industrial development in the county. The Davison County Zoning Ordinance is very development friendly, and it is our goal to keep it that way. Being too restrictive on development will result in zero growth for the county.

As for loss of land value, the Commission has continued to say they would like facts, not opinions. On March 8th you sent me an email offering your services to help put together an Ordinance that would meet the criteria and wishes of the majority citizens. On March 9th I responded, stating if you feel you have the expertise to write a wind energy ordinance, I would be more than willing to listen. However, the proposal would need to be fact based and researched on ordinances in close proximity to Davison County. Several sent to us are from states on the coast, which are easy to use if you are against wind energy. I suggested you start with Aurora County and Bon Homme County, due to the close distance their projects are to Davison County. How did they come up with their setbacks? Are they happy with the end result? Has property value decreased since construction? How many people have become sick since the towers went up? Has there been a negative effect on the animal population? I have yet to hear from any opponent regarding their conversations with Aurora and Bon Homme County. Why? Because they are opponents and don't hear the answer they want. I too talk to the Planning & Zoning and Department of Equalization staff in these counties. They tell me they receive phone calls from opponents who don't receive the answer they want to hear. I don't expect anyone to stand up and use these two counties as examples.

As for changing the Ordinance to property lines, this creates an issue where property lines get changed anytime a business wants to build in the county. This has been addressed in other counties on Concentrated Animal Feeding Operations and again restricts development.

I am not biased toward wind energy. However, I do feel Davison County is a great place to start and operate new ventures; regardless of the type. When the Governor's Office of Economic Development receives a request for a new business, they look to Davison County at the top of their list. This is something we are very proud of. Other counties have Ordinances that are so restrictive they never receive a call. Any business should have an opportunity to present their business plan to the Planning Commission, Board of Adjustment, and County Commission. For this reason, the Planning & Zoning Department recommended to the Planning Commission to remove Section 3:11 and Section 9:09 from the Proposed Zoning Ordinance. The Planning Commission agreed, and this recommendation will be presented to the County Commission when time allows, at a date to be determined by the Auditor.



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From: Harvey Kelly [<mailto:harvk@santel.net>]
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Cc: kenstach@santel.net; stehatlargo@santel.net
Subject: RE: Proposed changes to Davison County Ordinance

I say "AMEN" to the below e-mail correspondence. I guess I have voiced my opinion on the matter several times previously, however, on the newly revised & proposed Ordinance I must state some of my objections. First, I must say it surprises me to see our public official, Mr. Bathke, continue to propose ridiculous "Set Backs" and to sneak in "Industrial Development" into "Agricultural Use". His continued avoidance to address "Loss of land value & property lines, etc. & his weak 3-11-13 "Decommissioning" proposal is pathetic! **In plain talk:** In my opinion he is bias positive toward commercial wind systems and he will do anything to accomplish his objective. I am confident that the Commission will see through his draconian document and reject his **anti-citizen** proposal.

From: Holly Hansen [<mailto:holly@hansenwheel.com>]
Sent: Monday, May 01, 2017 6:17 PM
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Subject: Proposed changes to Davison County Ordinance

May 1, 2017

Davison County Planning & Zoning

We have many questions and concerns with the latest proposed Ordinance changes in regard to Wind Energy. As you read through this, please bear in mind that any action to implement an industrial WES is a 30 year commitment. **We, our children, and grandchildren will live with 30 years of effects caused by WES.**

The ordinance set back distance is based on antiqued information, not designed to address the unique attributes of Davison County and its higher population density.

It appears that the ordinance changes are not in the best interest of Davison County, but rather in the best interest of the WES companies, making it very easy for them to take advantage of our weak siting plan.

The most recent modifications to the ordinance appear to be going backwards, following the April 4th planning meeting, at which time the below concerns were stated by the commissioners and addressed through public input.

1) Commissioners and board members acknowledged that the 1000 foot setback was too short-(as witnessed at the meeting, stated in the meeting minutes, and referenced in the Daily Republic article)- and wished to explore a longer setback with an alternative based on a multiple of the tower height.

a) The resulting proposed revision amends the setback- keeping the same 1000 foot initial setback while adding an amendment to provide for a multiple that is potentially even closer still.

i) Section 3:11

#9-(Not be located within a distance of 1000', **or two times the height of the tower, whichever is greater,** of a non-participating residence, business, or public building.)

ii) In the case of a 410 foot turbine, which has an actual 'tower height' of 262 feet (and blades of 148 feet), a multiple of 2 times the tower height would be a 524 feet setback from an occupied residence. This is only half as far as the current 1000 foot setback and is going backwards, rather than advancing the negotiations on extending the (too short) 1000 foot setback. This 1000' setback guideline is very old and outdated, and woefully inadequate for current WES criteria.

b) The term **tower height** needs to be clarified in the wording of any proposed ordinance.

Information on wind systems that I have read defines tower height as: the height above grade of the fixed portion of the tower only, excluding the turbine parts of blades and tail. The **system height** measures the entire wind turbine system, including the blades. Even if the setback included a multiple of 2 of the entire system height (410 ft. x 2) this would still be only 820 feet from a residence- and still less than the (too short) 1000 foot setback.

Would this setback be measured from the base of the tower? If tower height only is used, then you have the extension of the tips of the blades (toward your residence) into that measurement; making the actual setback distance shorter still.

2) Testimony was presented by several concerned residents favoring the setback being from property lines rather than actual walls of an occupied residence, and at least one board member indicated contemplating setbacks for wind energy systems to property lines as compared to structure walls. (See minutes from April 4th meeting)

- a) The resulting proposed revision **does nothing to address the possibility of changing the verbiage on setbacks being from property lines** not structures, but amends the property line setback to be even closer than 500’.
- b) Section 3:11
#10- (Not be located within 1.1 times the **height of the tower** to any property line, **measured from the base of the tower.**) In the case of the wind turbine with an actual **tower height** of 262 feet, x 1.1 puts the tower only 288 ft. from any property line. (Far closer than 500 ft.)
- c) Then if you consider that the measurement **from the base of the tower** would mean that the length of the 148 ft. blades (rotors) would extend further into that ‘setback area’, resulting in the tips of the blades being only 140 feet from the property line.

In regards to the importance of siting guidelines with setbacks from property lines rather than exterior walls of occupied dwellings (and how this affects potential building eligibility), please read the two attached letters from Arvid J. Swanson, P.C. in their entirety. They provide a lot of insight into this topic, from a legal prospective.

http://lincolncountysd.org/userfiles/file/Public%20Submissions/02_17_17_AJ_Swanson_Correspondence.pdf

http://lincolncountysd.org/userfiles/file/Public%20Submissions/04_07_17_AJ_Swanson_Correspondence.pdf

3) Testimony was given by residents (and can be referenced in posted letters from local bankers and brokers) concerning both the potential loss of property values and the loss of future development possibilities and expansion opportunities on their property. The one mile setback would create an obligation to the WES to compensate adjacent landowners for this loss.

- a) The resulting proposed revision does nothing to safeguard property values, but rather attempts to allow an individual the option of building a structure even more dangerously close than the (too close) 1000 ft. setback.
- b) Section 3:11
#9- (**Structures built post-WES construction may be constructed inside the designated WES setbacks.**) So, any structure you want to build, after the tower is in place, could be constructed even closer than the setback. This is assuming that the regulations the WES has in place to decrease liability in the event of the tower collapsing, or to prohibit obstruction of wind flow to their tower, would even allow construction in such close proximity. They have guidelines on placement from structures and spacing between turbines, so they can reduce or eliminate these possibilities.

4) Testimony was heard about wind energy not being an agricultural use of the land, but rather a commercial or industrial entity.

- a) Rather than assuring that any permitted conditional use by an industry did not violate the existing intended use of the Agricultural zoned properties, as stated in the Davison County Zoning Ordinance, the proposed revision to (Agricultural Use Covenant Running with the Land) was modified to include **Industrial Development.**
- b) **Existing Article 5 of the Ordinance Section 501 states that the Agricultural District’s intended use is “to protect Agricultural lands and lands consisting of natural growth from incompatible land uses in order to preserve land best suited to agricultural uses and land in which the natural environment should be continued and to limit residential, commercial and industrial development to those areas where they are best suited for**

reasons of practicality and service delivery". The proposed revisions appear to be opening up the Ag district to possible Industrial development by WES and others, rather than limiting it.

- c) Proposed revision to Section 2:17 –
(Agricultural Use and Industrial Development Covenant Required) All agricultural or commercial building permits, plans, plats intended for residential dwellings or commercial use, or requests for rezoning of agricultural land shall be accompanied by an Agricultural Use and Industrial Development Covenant as defined herein).
- d) What is the intent and effect of this revision? Might the Agricultural Land in Davison County be re-zoned to allow for Agricultural Use and Industrial Use? What types of industries might that open the way for in the present Agricultural Districts of Davison County and how would industrial use affect the preserving of the land that is best suited for agriculture? (as stated above and referenced in the present Ordinance, under the intent of zoning for the Agricultural Districts).
- e) Wind energy is not an agricultural entity. It is a commercial business venture, as listed under the entities requiring a Conditional Use permit in the Davison County Zoning Ordinance. Wind Energy Systems are Commercial if they are "constructed to generate power from wind for distribution to off-site users."

5) Testimony was heard and board members voiced questions about the concerns of lack of verbiage in the ordinance pertaining to a decommissioning bond, and who would be responsible for bonds and liability insurance.

- a) Proposed revision in Section 3:11-
#13- (Provide yearly proof of a surety bond in an amount approved by the County Commission for removal of the decommissioned tower).
#14- (Provide yearly proof of liability insurance on the WES).
- b) These revisions leave many questions unanswered. What recourse do you have if (say in 5 years) the WES owners sell out or go broke, and so fail to produce yearly proof because they are no longer carrying it? Will the landowner then become responsible or the taxpayers? For what amount each year would they be required to provide proof of? Will it consider bond and insurance increases for over the (20-30 year) contract time frame?
- c) A bond should be required that pays, up-front, the full (30 year) contract period amount, and then the bond should be evaluated yearly to adjust for any additional rates required – in ratio to inflation and current costs of decommissioning.
- d) Wind energy systems are huge, specific use structures with no other use than as a wind tower. They are also structures that are being supported by government subsidies for a limited period of time. They will become obsolete, requiring decommissioning. No portion of the liability for this decommissioning should fall to the Davison County taxpayers. If this ordinance leaves any doubt to that matter, it should be examined more thoroughly.

We respectfully ask that you do not recommend acceptance of the proposed changes to the Davison County Zoning Ordinance, with regard to the possible granting of a conditional use permit to WES, based upon these inadequate siting guidelines. **Our concern is that they do not give sufficient and careful consideration to Davison County's rank as 3rd in the state in population density, nor to the magnitude of far-reaching and long-term implications, sure to impact the property, individual rights, health, safety and welfare of so many of our county's rural residents.**

We rely upon the Planning & Zoning Commission to establish criteria essential to safeguarding the best interests and promoting the highest 'Quality of Life' possible for all current residents; by not leaving them vulnerable and unprotected from the negative impact of consequences beyond their control, and contrary to the wishes of many.

We greatly appreciate your willingness to listen to and grant careful consideration to the input and research of citizens, such as ourselves, who are directly affected by the actions and decisions made by this commission.

Thank you for your service to Davison County and your dedication of extensive time and effort into this complex issue.

Respectfully submitted-

Doug & Holly Hansen / Davison County Residents

Thanks!

Holly Hansen



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